

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT C. MITCHELL, III,

Plaintiff,

CIVIL CASE NO. 08-11136

v.

PAUL D. BORMAN
UNITED STATES DISTRICT JUDGE

PATRICIA L. CARUSO, DENNIS STRAUB,
PETER GOVORCHIN, JOHN Z. OCWIEJA,
CYNTHIA ACKER, FRED PARKER, and
ANNETTE POWELL,

Defendants.

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ORDER OF DISMISSAL

I. Introduction

On March 17, 2008, Robert C. Mitchell, III, and Kenneth Lester filed a joint motion to proceed *in forma pauperis* and a *pro se* complaint against seven state employees. The plaintiffs were state prisoners, and they alleged that the defendants failed to honor their recommendation to donate money in their Prison Benefit Fund to six nonprofit organizations. The Court determined that three of plaintiff Mitchell's prior complaints had been dismissed as frivolous or for failure to state a claim. Accordingly, on April 14, 2008, the Court ordered the plaintiffs, pursuant to 28 U.S.C. § 1915(g), to show cause why they should not be required to prepay the full filing fee for this action. The Court warned the plaintiffs that failure to respond to the Court's order within twenty-one days could result in the dismissal of this action.

Plaintiff Mitchell sought an extension of time to file a response to the order, and plaintiff Lester explained in a separate answer to the order that he was not a party to this lawsuit and did

not authorize plaintiff Mitchell to file the lawsuit on his behalf. On May 30, 2008, the Court dismissed plaintiff Lester from this case and ordered plaintiff Mitchell to file his response by June 5, 2008. To date, plaintiff Mitchell has not filed a response to the Court's order, nor paid the filing fee for this action.

II. Discussion

Section 1915(g) of Title 28, United States Code, provides:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

Three of plaintiff Mitchell's complaints have been dismissed as frivolous or for failure to state a claim. *See Mitchell v. Booker*, No. 08-10078 (E.D. Mich. Feb. 28, 2008) (dismissing the complaint for failure to state a claim); *Mitchell v. Michigan*, No. 1:01-cv-759 (W.D. Mich. Nov. 30, 2001) (summarily denying a petition for removal and a motion for a stay, which the Court construed as a complaint under 42 U.S.C. § 1983, for failure to state a claim for equitable relief); and *Mitchell v. Calhoun County Pretrial Services*, No. 1:95-cv-00878 (W.D. Mich. Jan. 4, 1996) (summarily dismissing Mitchell's complaint as frivolous). Furthermore, the complaint does not allege that plaintiff Mitchell is in imminent danger of serious physical injury. The complaint therefore is **DISMISSED** without prejudice pursuant to 28 U.S.C. § 1915(g).

s/Paul D. Borman
PAUL D. BORMAN
UNITED STATES DISTRICT JUDGE

Dated: June 30, 2008

CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record by electronic means or U.S. Mail on June 30, 2008.

s/Denise Goodine
Case Manager